

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 188

BY BUSINESS COMMITTEE

AN ACT

RELATING TO IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2087, IDAHO CODE, TO PROVIDE A CODE REFERENCE AND TO PROVIDE ADDITIONAL DUTIES TO A CLIENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2087, Idaho Code, be, and the same is hereby amended to read as follows:

54-2087. DUTIES TO A CLIENT. If a buyer or seller enters into a written contract for representation in a regulated real estate transaction, that buyer or seller becomes a client to whom the brokerage and its licensees owe the following agency duties and obligations:

- (1) To perform the terms of the written agreement with the client;
- (2) To exercise reasonable skill and care;
- (3) To be available to the client to receive and timely present all written offers and counteroffers;
- (4) To promote the best interests of the client in good faith, honesty and fair dealing including, but not limited to:
 - (a) Disclosing to the client all adverse material facts actually known or which reasonably should have been known by the licensee;
 - (b) Seeking a buyer to purchase the seller's property at a price, and under terms and conditions acceptable to the seller and assisting in the negotiation therefor; or
 - (c) Seeking a property for purchase at a price and under terms and conditions acceptable to the buyer and assisting in the negotiation therefor;
 - (d) For the benefit of a client/buyer: when appropriate, advising the client to obtain professional inspections of the property or to seek appropriate tax, legal and other professional advice or counsel;
 - (e) For the benefit of a client/seller: upon written request by a client/seller, requesting reasonable proof of a prospective buyer's financial ability to purchase the real property which is the subject matter of the transaction. This duty may be satisfied by any appropriate method suitable to the transaction or, when deemed necessary by the real estate licensee, by advising the client to consult with an accountant, lawyer, or other professional as dictated by the transaction.
- (5) To properly account for moneys or property placed in the care and responsibility of the brokerage pursuant to section 54-2041, Idaho Code; and
- (6) To maintain the confidentiality of specific client information as defined by and to the extent required in this chapter, and as follows:
 - (a) The duty to a client continues beyond the termination of representation only so long as the information continues to be confidential client information as defined in this

chapter, and only so long as the information does not become generally known in the marketing community from a source other than the brokerage or its associated licensees;

(b) A licensee who personally has gained confidential client information about a buyer or seller while associated with one (1) broker and who later associates with a different broker remains obligated to maintain the client confidentiality as required by this chapter;

(c) If a brokerage represents a buyer or seller whose interests conflict with those of a former client, the brokerage shall inform the second client of the brokerage's prior representation of the former client and that confidential client information obtained during the first representation cannot be given to the second client. Nothing in this section shall prevent the brokerage from asking the former client for permission to release such information;

(d) Nothing in this section is intended to create a privileged communication between any client and any brokerage or licensee for purposes of civil, criminal or administrative legal proceedings.

(7) Unless otherwise agreed to in writing, a brokerage and its licensees owe no duty to a client to conduct an independent inspection of the property and owe no duty to independently verify the accuracy or completeness of any statement or representation made regarding a property. Unless otherwise agreed to in writing, a brokerage and its licensees owe no duty to conduct an independent investigation of either party's financial ability to complete a real estate transaction.

(8) The duties set forth in this section are mandatory and may not be waived or abrogated, either unilaterally or by agreement.

(9) Nothing in this section prohibits a brokerage from charging a separate fee or commission for each service provided to the client in the transaction.

(10) Nothing in this section shall result in imputed knowledge between multiple licensees of the brokerage when neither has reason to have such knowledge.

(11) A brokerage and its licensees may represent two (2) or more buyers who wish to make an offer for the purchase of the same real property; provided, that the brokerage or its licensee has advised all such buyers in writing of the same.